



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-8277

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210165.

The Mesquite Police Department (the "department") received a request for information relating to calls for service for a particular address during a specified time interval. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). We find that section 261.201(a) is applicable to the information submitted as Exhibit 2. You do not inform this office of any rule adopted by the department that would allow the information in question to be released in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that Exhibit 2 must be withheld from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.¹

Section 552.101 of the Government Code also incorporates sections 772.118, 772.218 and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 apply only to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You inform us that the City of Mesquite is part of an emergency communication district established under section 772.118. You indicate that the highlighted telephone numbers in Exhibit 3 were obtained from a 911 service supplier. Based on your representations, we conclude that the department must withhold these telephone numbers under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.²

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

²As we are able to make this determination, we do not address your argument that the telephone numbers also are confidential under section 771.061(a) of the Health and Safety Code.

A social security number is confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act if it was obtained or is maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number contained in Exhibit 3 is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number in question was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing the social security number that we have marked, the department should ensure that it was not obtained and is not maintained by the department under any provision of law enacted on or after October 1, 1990.

Section 552.101 also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked a small amount of private information that must be withheld under section 552.101.

The common-law right to privacy also protects certain types of personal financial information. This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-

law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). You have highlighted personal financial information that you contend is private. We agree that the department must withhold that information under section 552.101. We have marked additional personal financial information that must also be withheld under section 552.101.

Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" or "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1)-(2). Information relating to a Texas driver's license must be withheld from the public under section 552.130(a)(1). Information relating to a Texas motor vehicle title, registration, or vehicle identification number must be withheld from the public under section 552.130(a)(2). We agree that the department must withhold the Texas driver's license and motor vehicle information that you have highlighted under section 552.130. We have marked other motor vehicle information that also is excepted from public disclosure under section 552.130. We note, however, that the requestor appears to have an ownership interest in the vehicle to which the marked information pertains. If so, then that information may not be withheld from the requestor under section 552.130, which protects privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself); *see also* Gov't Code § 552.222(c) (governmental body may obtain identifying information sufficient to permit determination of whether requestor is eligible to receive motor vehicle record information under Transp. Code ch. 730).³

In summary: (1) the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Codes; (2) the telephone numbers of 911 callers must be withheld under section 552.101 in conjunction with section 772.118 of the Health and Safety Code; (3) the department may be required to withhold the social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (4) the department must withhold the information that is protected by common-law privacy under section 552.101; and (5) the Texas driver's license and motor vehicle information must be withheld under section 552.130, except for motor vehicle information to which the requestor has a right of access under section 552.023. With the exception of the information that must be withheld under sections 552.101 and 552.130, the submitted information must be released.

³Should the department receive another request for this same information from a person who would not have a right of access to it, the department should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301, .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

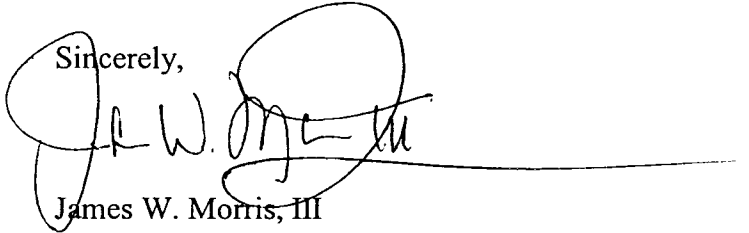
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 210165

Enc: Submitted documents

c: Mr. Manus Conejo
2715 Bissell Way
Wylie, Texas 75098
(w/o enclosures)